

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUN MICROSYSTEMS, INC.,

No. C-07-05488 EDL

Plaintiff,

v.

**ORDER REGARDING TENTATIVE
CLAIM CONSTRUCTION**

NETWORK APPLIANCE, INC.,

Defendant.

In the December 23, 2008 Order Construing Claim Terms of the NetApp patents, the Court tentatively construed the term “storage layer underlying the block and file level servers,” as “The storage layer is a software layer ‘below’ the block and file level servers, that is, the storage layer provides operations that are used by the block and file level servers.” December 23, 2008 Order at 33. The Court invited the parties to comment on the wording of the tentative construction “in case it could have any unintended consequences, in light of and without rearguing the Court’s ruling on the parties’ proposed constructions.” *Id.* at 34.

By letter dated January 12, 2009, NetApp proposes modifying the construction to replace the phrase “block and file level servers” with “software implementing the functions of block and file level servers.” Docket no. 116. Sun objects to NetApp’s proposal on the grounds that NetApp does not identify any “unintended consequences” of the Court’s proposed wording, and presents new arguments without leave of Court. Docket no. 117.

The Court declines to adopt NetApp’s proposed construction to further construe “block and file level servers” at this time as going beyond the request by the Court regarding “unintended

consequences.” Furthermore, Sun’s request that the Court strike the last three paragraphs of NetApp’s letter proposing its modified construction is denied. The Court confirms its construction.

IT IS SO ORDERED.

Dated: January 14, 2009

Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge